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LAW FACULTIES AND LAW SCHOOLS. A COMPARISON OF LEGAL EDUCATION IN THE UNITED STATES AND GERMANY[1]

MAX RHEINSTEIN

If a man who has been a member of a German law faculty has, like the writer of this article, the thrilling experience of being appointed to the staff of an American law school, he is struck by the similarity of his new and his old surroundings. He finds an impressive illustration of the essential unity of Western civilization and its institutions. He moves in a familiar atmosphere; he has little difficulty in feeling himself at home. There are differences, of course, and they will be emphasized in the following, as in any comparison. We should not forget, however, that they are less important than the essential basic unity of common traditions, common aims, common social functions, and a common spirit.

All German law faculties are parts of universities, and German universities, as European universities in general, look back on long centuries of tradition. Many tendencies were at work in their development. Their present shape is the result of tensions and adaptations to changing circumstances, a compromise between conflicting tendencies delicately balanced.

I.

Continental universities have two functions, which are not always easily reconciled. They are communities of scholars as well as teaching institutions.[2] They have not only the task of handing down from generation to generation the learning and wisdom of the past, and of increasing it through new creative thought and exploration, but also of preparing young men for practical professions. This double task reflects their double origin from mediaeval communities of scholars, such as the Universities of Paris, Bologna, Salerno, and Cambridge, and from such younger institutions as the Universities of

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[1] The recent publication of Dr. Stefan Riesenfeld's article, *A Comparison of Continental and American Legal Education* (1937) 36 Mich. L. Rev. 31, relieves this author of the task of giving a detailed description, and affords him an opportunity to emphasize differences in aims and spirit.

[2] On the meaning of scholarship in law, see Max Radin's delightful article, *Legal Scholarship* (1937) 46 Yale L. J. 1124, especially 1135 *et seq.*

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Prague,[3] Heidelberg,[4] Budapest,[5] which were established by princes as schools for such public administrators as they needed for the establishment of their absolutistic regimes.[6] These younger universities were modelled after the pattern of the older ones as self-governing communities of scholars.[7] The professors of all universities were inclined to regard themselves primarily as learned men, and only secondarily as teachers.

Law professors in particular were influenced in this respect by various circumstances which were responsible for some of the most essential differences, not only between continental and Anglo-American legal education, but also between continental and Anglo-American law. While the common law of England and America was essentially shaped by judges, the civil law of the Continent of Europe was built by university professors. The Curia Regis of the English king was the centralizing agency, which, out of innumerable customs of cities, manors, counties, guilds, forests, stannaries, of the Church and of the navy, of the constables' courts and of the law merchant, molded the common law of England. No royal, papal, or imperial court attained such a role on the Continent. The elaboration of a common law on the basis of the law of ancient Rome was the work of the universities, of the scholars of Pavia, Bologna, and Padua, of Paris and Bordeaux, of Leyden, of Prague, Vienna, Budapest, Cracow, of Copenhagen, of Leipzig, Heidelberg, Ingolstadt, and Halle, of Berne, Zurich, and Geneva. In the fourteenth century, a young man who aspired to a career in the service of his prince, or who intended to practice before the prince's boards and tribunals as an advocate, or as a notary, went to the Italian seats of learning. In later times, the princes provided their young men with universities in their own territories, but in all universities the same Corpus Juris was taught by the professors. The Corpus Juris, the work of the sixth century, was to be adapted to the needs of new times. This task was fulfilled by the professors, who were creative men of great learning and authority. No court had a territory sufficiently large to obtain the

[3] Founded in 1347.
[4] Founded in 1385.
[5] Founded in 1475.
[6] *Cf.* the analagous effort of the Tudor kings in England, which, due to the peculiar political structure and developments of England, had no lasting effects on English law and English universities; see, thereon, 4 Holdsworth, History of English Law (1924) 54, 217, 232.
[7] On the history of universities in general, see Rashdall, Universities of Europe in the Middle Ages (1936); Paulsorn, Geschichte des gelehrten Unterrichts (Sadler's trans. 1906); D'Irsay, Histoire des Universités Françaises et Etrangères (1933-35).

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same authority as a unifying agency as the universities. The professors' influence and authority is illustrated by the fact that the judges, who had been their pupils, became accustomed to ask the professors' opinions in difficult cases. Finally, the faculties of law attained, even formally, the position of appellate courts to which parties could appeal from the supreme courts of the territories. The "transmission of the docket" of a case from a court of "ultimate" appeal to a law faculty became a fixed institution; professors became the highest judges.[8] Even where their jurisdiction was limited to the territory of a single prince, the law professors would migrate from one faculty to another and uphold a common tradition and a common law.

The importance of the institution of *Actenversendung* can hardly be overestimated. It brought the law professors into continuous contact with the facts of life and the actual problems of legal practice; it was a consequence as well as a cause of their enormous influence on the development of the law. Its memory still lingers on in the habit of attorneys of laying before the courts professors' learned opinions on difficult questions of law, a practice which not only provides leading professors with considerable fees, but which also makes them influential amici curiae.

For centuries, even officially, teaching was only part of the law professors' manifold activities. They were also judges, legal advisers, scholars, and as scholars they primarily felt themselves. Their principal ambition was, and still is, to be known as authors of influential books, to be quoted as authorities, to elaborate theories, to adapt the law to the changing needs of time and place. The students might listen to the words of truth the professor would reveal to them in his lecture. Occasionally, a young man would be used by a professor as a "famulus", or a professor would condescend to a formal disputation.

In America, legal education originated in the office of the attorney who would explain to his apprentice legal questions as they happened to arise in his practice, or who would occasionally discuss with him a chapter from Blackstone. If one of these practitioners had more pedagogic talents than others, apprentices would prefer to "read law" with him. In the course of time some lawyers discovered that pupils provided a welcome supplementary source of income. They specialized in this line. There finally emerged small schools, such as

[8] *Cf.* 1 Stintzing, Geschichte der deutschen Rechtswissenschaft (1880) 65; Stoelzel, Entwicklung des gelehrten Richtertums (1872) 187.

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the Litchfield School, conducted by practitioners for practitioners, trade schools where young men could learn the techniques of practice and pleading, the arts of drafting instruments and of winning law suits. Such is still the spirit of the modern night schools, and such also was the spirit of the first successful American university law school, Harvard, before Story, Langdell and his colleagues recognized the law professor's responsibility as a scholar. Under the leadership of these men and such others as Chancellor Kent at Columbia, American law professors began to criticize, to refine, and to overhaul the law of the United States.[9] An imposing array of learned treatises and several hundred volumes of law reviews bear visible testimony to the extent of their scholarly activities. It is still true today, however, that American law professors regard it as their primary duty to devote themselves to teaching, in the classroom, in their offices, in advising the staff of the law review, in examinations, in moot courts, and finally even in finding jobs for their students, a task hardly dreamed of by a German law professor. Teaching methods have been elaborated in this country to a high degree of perfection. Law teachers are imbued with a spirit of responsibility toward their pupils not equalled on the other side of the Atlantic.

But it seems that American law teachers have not yet become fully conscious of the causes and consequences of the scholarly side of their activities and of the fact that the dominant role in the development of American law seems to be passing from the judges to the professors. If a country with about fifty courts of ultimate appellate jurisdiction desires to maintain the unity of its law, it can no longer rely on its judges. The group which emerges as the unifying force in the United States of today is the same to which the analogous task devolved in the Europe of the fourteenth century, the university professors. Just as the European law schools of pre-code days were not teaching the law of any particular state or territory, the leading American law schools of today pride themselves to be "national", to teach *the* common law. This change of domination from judges to professors is bound to influence American law in its innermost core.

[9] The Standard work on the history of legal education in the United States is Alfred Z. Reed, Training for the Public Profession of the Law (1921) (Carnegie Foundation for the Advancement of Teaching, Bul. no. 15). See also Centennial History of the Harvard Law School, 1817-1917 (1918); Redlich, The Common Law and the Case Method in American University Law Schools (1914) (Carnegie Foundation for the Advancement of Teaching. Bul. no. 8). On the issue between the vocational and the scientific ideal, see especially Reed at pp. 134-150, 152 n. 1, 156, 158 n. 3, 288-295, and Redlich at pp. 41 *et seq.* On night schools, see Reed at pp. 394 *et seq.*, 415-418; and Redlich at pp. 67, 69-71.

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Max Weber has demonstrated that the technique and the spirit of a legal system depend on what group of *honoratiories* exert the dominating influence in its development.[10] He has shown that it matters whether a legal system is dominated by priests, or, like classical Roman law, by private gentlemen, or by judges, or by professors. Judges are interested in deciding individual cases. A law dominated by them will be casuistic, near to life, sound and practical, but frequently illogical and unsystematic. Professors are interested in grouping the rules of law in a memorizable arrangement and, therefore, in classification, logic, concepts, systematization, and coherence. For the reason already indicated, American law seems to be increasingly becoming a professors' law. Learned treatises and law review articles are gaining influence.[11] In constitutional law, where one court speaks the ultimate word for the country, Marshall, Taney, Holmes, Hughes, and Brandeis are still great names. In ordinary private law, names of professors or learned writers, such as Wigmore, Williston, Beale, are becoming conspicuous. Story's and Kent's influence is founded rather on their work at the writing desk than on that on the bench. The Restatement of the American Law Institute, the official attempt of the American legal profession to unify and clarify American law, is not only written by professors but also shows the typical marks of professordom. An epochal task has devolved upon the American law teachers. They cannot help becoming scholars in the old continental sense. Hence, the unrest in American law schools, and hence, the growing interest in continental law faculties, their organization, and their work.

The continental faculties, on the other hand, no longer present the old picture. European law professors found themselves compelled to devote more and more time and attention to teaching. Practically all continental law faculties are divisions of state universities,[12] which are supported by the taxpayers, not for the mere purpose of enabling professors to write books or to pass their time in contemplation, but for getting results in the form of able public officials,

[10] Wirtschaft und Gesellschaft (1925) 408; see also Ehrlich, Sociology of Law (1936) 271 *et seq.*

[11] See Mr. Justice Cardozo's remark in the introduction to Selected Readings on the Law of Contracts (1931) at p. ix: "Judges and advocates may not relish the admission, but the sobering truth is that leadership in the march of legal thought has been passing in our day from the benches of the courts to the chairs of the universities."

(Belgium), Fribourg, (Switzerland), and Milan (Italy). All German universities (Belgium), Fribourg (Switzerland), and Milan (Italy). All German universities are state universities.

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judges, and advocates. Besides, only part of a university professor's income is earned as a fixed salary; to a considerable extent, it is derived from fees paid to him by his students. For the younger university men, the so-called *Privatdozenten,* these fees are even the only source of income. The more students a professor is able to attract, the more money he makes. This system, though it constitutes the source of many petty jealousies and intrigues, has stimulated the professors' interest in the teaching phase of their activities, especially since the students can freely migrate from university to university during the course of their studies. But even in the same university, the same field is usually taught by two or even more professors, affording no small stimulus for catering to the students and their needs.

The increasing attention paid to teaching has been accompanied by a decline of the professors' influence on the development of the law, which was caused by more profound reasons. The unity of the Christian world, as it was represented in the mediaeval idea of the supremacy of pope and emperor over all Christendom, was gradually lost with the emergence of the great national states. Their laws were unified and codified, first in Prussia in 1791, then in France (1804), Austria (1811) and other countries, finally in Germany (1900), and in Switzerland (1912). The law faculties were no longer needed as unifying centers. Their appellate jurisdiction was abolished and the application of the codes was entrusted to central supreme courts of nation wide jurisdiction. Professors still play an important role in the exegesis of the codes and in their adaptation to the needs of changing times. Professors' names are still conspicuous, especially in France, among the authors of leading treatises, law review articles, and critical case notes. However, they have to compete with lawyers, supreme court judges, and ministerial councillors, who contribute an increasing share in the production of textbooks, statutory annotations, and law review articles. That judicial precedents are about to surpass all theoretical writings is an inevitable result of the existence of central courts; and legislation increases the influence of the draftsmen in the central ministries.[13] Only in social prestige and income are law professors still pre-eminent.[14]

[13] Editions of statutes annotated and explained by the ministerial councillor who is responsible for the draft of the statute in question (so-called *Referentenkommentare*) form the most influential group of German law books of the post-war period.

[14] The number of law professors is comparatively small. There are relatively fewer universities in Germany than in the United States. While there are in the

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II.

The double task of preserving and promoting scholarship, and of preparing young men for practical vocations, especially in the public service, found its expression in the organization of the German universities and their law faculties. Learning, by its very nature, must be free. Yet, thought is creative force acting upon the community whose rulers are and must properly be vitally interested in keeping it under control. The history of universities is the history of perpetual changes of emphasis between the two poles of *freedom of thought* and *government* (or *church*) *control* of ideas and teaching. In the course of the nineteenth century, Germany succeeded in working out an admirable compromise, too complicated to be described here.[15] No more than a few points can be mentioned here for the sake of illustration.[16] Academic policies, and especially questions of personnel, were determined in a process of collaboration between the Ministry of Education, representing the state, and the academic faculties, represented by their organs: senate, dean, and rector. Most of the powers vested in the board of trustees and the president of an American endowed university rested in Germany with the Minister of Education who used to exercise them through his *Hochschulreferent* (Head of the Department of Institutions of Higher Learning). The representative heads of the universities (rectors) and of the several fac-

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entire Reich only 23 universities for a population of circa 67 millions, the Association of American Law Schools alone has 82 member schools (1936-37). In 1932, the number of instructors in the 23 German law faculties was 274, of whom 198 had the rank of full professor, while 16 were extraordinary professors with, and 21 extraordinary professors without, a budgetary salary, and 39 *Privatdozenten*. In addition, 58 practitioners (high government officials, judges, and a few lawyers) were engaged in teaching university law courses, 40 of whom were entitled to the rank of honorary professor. The Directory of the Association of American Law Schools lists 947 names (1936-37).

The income of a German law professor is relatively higher than that of his American colleagues, and considerably higher than that of a German judge. The professional emoluments of a leading professor at a big law faculty were, at least down to the National-Socialist regime, two to three times as high as those of a Supreme Court judge. They were supplemented by considerable additional amounts derived from fees for legal opinions and from royalties for law books and articles. (Law review articles are paid for in Germany!).

[15] The interested reader may be referred to Mr. Abraham Flexner's book, Universities, American English and German (1930).

[16] When speaking in the present tense, the author has in mind mainly the state of the German law faculties immediately before their "co-ordination" through the National-Socialist regime. The more important ones of the recent changes will be mentioned, however. The picture of the German universities of the pre-National-Socialist period still holds good in the main for the universities of Switzerland, Austria, and Czechoslovakia.

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ulties[17] were no permanent officials, but elected for one year by their colleagues. The dean of a German law faculty did, therefore, not hold the same position as the dean of an American law school. He was no more than a temporary chairman of a collegiate board, the faculty of law.[18]

The faculties alone decided whether a man should be admitted to the community of academic scholars, and it is significant that their requirements of admission tested primarily the applicant's scholarly ability and achievement. In order to obtain the *venia legendi,* one had first to be a *Doctor,* and in order to obtain the Doctor's degree, one had to write a *dissertation.* In addition, an applicant for the *venia legendi* had to write another learned treatise, preferably a sizable book, which was to be "a scholarly contribution of creative learning". A teacher thus admitted by a faculty as one of its members was a *Privatdozent.* He was allowed to lecture on his particular field, but he did not receive a salary. His income was derived solely from the lecture fees of the students he was able to attract. In order to become a salaried professor one was to be appointed by the Minister of Education, who, whenever an appointment was to be made, was to consult with the faculty. Although having in most states the formal power of making appointments even in contradiction to the wishes of the faculty, he was reluctant to use it. Nevertheless, there are instances where outstanding innovators were appointed against the opposition of a clannish faculty, and even cases where the appointee came from outside the academic world, As a general rule, however, no man would be appointed to a chair who was not already a *Privatdozent,* that is, approved as a scholar by a faculty.[19]

[17] *I.e.,* departments or schools. Traditionally, the continental universities consist of the four faculties of theology, law, medicine, and philosophy (i.e. the liberal arts and sciences); since the middle of the nineteenth century, new faculties of economics, veterinary surgery, etc. were added in some universities, while in others the new fields were incorporated in one or the other of the old faculties. Economics was thus incorporated in the faculty of philosophy (*e.g.* in Berlin), or of law (Wuerzburg). In France, law and economics were united throughout in faculties of law and political science (Ecoles de droit et des sciences politiques). Engineering and agriculture remained outside the universities and are taught in special institutions, sharing with the universities the rank and name of "Institutions of Higher Learning" (*Hochschulen*). The German Schools of Business (*Handelshochschulen*) were incorporated in the universities by the National-Socialist government.

[18] This was changed by the National-Socialist regime. Rector and deans are now permanent government appointees. The rector is the "leader" of the university, the dean the "leader" of his faculty. Senate and faculties no longer decide but have consultative functions only.

[19] Under the National-Socialist regime, no one is any longer admitted to teaching without being appointed by the government. A *Dozent* is now simply a younger teacher with a lower salary, corresponding to an American assistant professor. The government ordinarily but not necessarily appoints the *Dozenten*

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While questions of personnel and academic administration were determined by the collaboration of a government official and the autonomous academic bodies, the substance of teaching of each profesor or *Privatdozent* was absolutely free. There were no other limits to the freedom of academic teaching than self-imposed ones. Some degree of elimination of politically or otherwise "undesirable" elements could be and actually was exercised by the faculties in the process of admission; and for a *Privatdozent* aspiring, as was natural for him, some day to become a professor, it was advisable not to express unorthodox views too outspokenly. However, once a man was appointed an "ordinary professor", almost nothing could stop him from voicing any opinion he liked, provided he kept within the limits of academic dignity. Academic caste spirit and other social influences were quite successful, of course, in preventing a man of less than unusual firmness of character from straying beyond the limits of what was generally held respectable and socially approved. Under the monarchical regime the desire for being finally appointed a privy councillor, or even to be ennobled, or at least to be decorated with an order, was an additional stimulus not to incur the disapproval of the princely court and the government. Yet, it was always possible for an independent character to speak his mind, to go in new ways, and to become a leader of an intellectual opposition. That the system left room for creative opposition and innovation, was the very basis of the brilliant position of the German universities in the world of scholarship and learning.[20] That their position was less brilliant in legal science than in other fields of learning was certainly connected with the fact that legal scholars, as a body, were more complaisant, more conservative in every respect than their brethren of the other faculties.

Freedom of teaching has a still wider meaning in the German universities. Once a man is appointed ordinary professor, he is free to teach whatever topic he likes. There is assigned to him some

from the number of the newly created category of *doctores habilitati, i.e.,* of those persons whom a faculty has found to be able to become academic teachers. *Habilitation* by the faculty alone no longer confers the *venia legendi.* The ancient *Privatdozent* has disappeared from the academic scene of the Reich.

[20] It is with respect to the freedom of teaching that the most momentous impacts were made on German academic traditions by the National-Socialist regime. Nonconforming professors were eliminated at the outset. The idea of learning and science as realms of the freely creative intellect is spurned. Science is not recognized as an end in itself but only as a means toward the glorification and promotion of the German race and the National-Socialist *raison d'état.* The first and principal task of every German teacher, in the kindergarten as well as in the university, is to educate "National-Socialist fighters".

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particular field which he is obliged to teach. He is not prevented, however, from teaching in addition whatever other course he may choose. Theoretically the professor of botany may teach contracts or ancient history. Every German professor may be a "roving professor". Actually, not many avail themselves of this opportunity. Occasionally, however, a professor appointed for one field did venture into a neighboring field, and fruitful new ideas sprang from such combinations. Some of the very greatest names in the history of the German universities belong to such men. More frequent are the cases where a professor is teaching some special course or seminar, not provided for in the official curriculum, or where he announces a course featuring some new teaching method. The innovating spirit is encouraged by this special type of freedom, and even the man who teaches no more than his "own" field has the feeling that he is doing so out of his own free choice and not only because it is assigned to him by the dean or the curriculum. American law schools appoint professors to suit their curriculum; a German professor, within limits, may create the courses suiting him.

III.

The counterpart of the freedom of teaching is *freedom of learning*. Foremost it means that class attendance is not required. The students may come to class or they may loaf, as they please. They are not treated as boys, but as men. Besides, there are examinations to be passed.

There are students who use their "freedom of loafing" extensively during their first university years and who try afterwards to make up their deficiencies through "cram-courses", taught by enterprising lawyers outside the university. The majority of the students avail themselves of the opportunities offered by the university and take cram-courses in addition.

Freedom of learning also means freedom of choice. In the South German states, no law courses whatever were prescribed for law students. In Prussia, on the other hand, certain law courses were prescribed. The National-Socialist reform legislation of 1934-35 is self-contradictory. While the Maxims for the Study of Law, which are issued by the Reichs-Ministry of Education, emphatically adopt the system of complete freedom of selection,[21] the Ordinance on Training for the Legal Profession, which emanates from the Min-

[21] See *infra*, Annex, I, B, 4.

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istry of Justice, makes it a preliminary to admission to the examination that the candidate has registered for university courses on certain subjects.[22] The examination is a comprehensive one, to be passed at the end of the university curriculum. No student is allowed to take it earlier than at the end of his third year at the university.[23] Course examinations or annual examinations do not exist.

While no law courses whatsoever were prescribed in the South German states, these states did require law students to register for no less than eight nonvocational courses. This requirement was the substitute for the American college, for which no exact parallel exists in Germany. From the gymnasium,[24] the two top classes of which roughly correspond to the American junior college, the young man enters immediately upon his professional university study. Thus, the situation is much as it would be in this country if the A.B. degree were granted at the end of a combined high school and junior college curriculum. Under the recent reforms, the requirement of a minimum number of nonvocational courses has been abolished. The law curriculum itself is, and always has been, broader than in this country. It includes political science, economics, and history.[25] Whether or not a student will take any nonprofessional courses is

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[22] See *infra*, Annex, III, §§ 3, 5; IV, § 5.

[23] The first Juridical Examination, which entitled the successful candidate to enter the "preparatory service" and to the title of "Court Referendar", is a state examination, regulated by the government, and taken before a government board. The doctorate, on the other hand, is purely a university examination, officially designed to test a candidate's scholarly attainments. It consists of an oral part and its main feature, a "dissertation", which must be fit to print and which must represent an original contribution to legal science. While it once marked a man's acceptance into the community of academic scholars, the German legal doctorate has been grossly inflated in numbers and belittled in value. While some universities, *e.g.*, Munich or Berlin, still try to uphold some vestige of the ancient meaning of the doctorate and do not confer the degree on more than about ten candidates a year, other faculties have degraded it almost to a matter of course and a source of fees. Although it is not a necessary requirement to the bar or to government service on the bench or in administration, the doctor's degree has social significance.

Even where the requirements are not severe, the dissertation must at least be a complete survey of legal doctrines and decisions dealing with a particular problem, and the candidate is compelled to devote considerable time and energy to autonomous research and writing. The dissertation is mostly written during the first years of the preparatory service. The candidate need not be in residence at the university, although he may follow one or another course or seminar. Organized graduate courses do not exist. The American graduate degree resembles the German *habilitation* more than it does the doctorate, which has no counterpart in this country.

[24] Or from one of the newer schools of equal rank where science or modern languages are more featured than in the old "humanistic" gymnasium with its classical curriculum.

[25] See *infra*, Annex, II.

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now entirely left to him in the whole Reich, as it already was in Prussia before the recent reform of the curriculum.

Seriously minded students always availed themselves of the opportunity of following courses on outside topics, of roaming freely through the university, of taking up the subjects of their individual likings, and, quite particularly, of listening to the great men of their university in whatever field they happen to be. The author of this article can testify to the stimulus he received from listening to such men as Woelfflin, the historian of art, Kraepelin, the psychiatrist, and most of all, Max Weber, the sociologist. In other universities, the "grand old man" might perhaps be in physics, or philosophy, or theology. Students of all faculties would flock to him to receive some impression of the spirit of scholarship, of the charm and inspiration of a great personality, and of the fundamental unity of human learning and wisdom as expressed in the *universitas litterarum*. Of what use is a *university* law school, if it is a mere vocational school which is loosely attached to other vocational schools and a college of liberal arts through a set of common administrative officers and a common budget (in which science laboratories are fed with the tuition fees of the law school)? An American visitor to a German university will not find even a law school building. All faculties are under the same roof, the same classroom may be used one hour for a law course and the next for a course on history or mathematics or theory of art. Students of all faculties constantly meet each other in the hallways and dining rooms. On the other hand, it is true, there is no faculty club, and dormitories are a recent innovation.

A third aspect of the students' freedom of learning is the freedom of moving from one university to another. Unless compelled to stay at one place by external reasons, law students, just as those of other faculties, will spread the three to four years of their studies over several universities. Thus a student may spend his first winter semester at Munich and enjoy winter sports in the Alps, good music, and the joys of the carnival. The following summer may find him perhaps at one of the seacoast universities, where he can enjoy sailing, swimming, and hiking in the forests and on the moors. And so he transfers next to a university in a big city, perhaps Berlin, and from there to one of the charming little "academic villages" like Marburg or Tuebingen, to spend at last his final semesters at the university of his home state or province. Determining his choice, however, are not only external factors, but also the fame and reputation of great teachers and scholars in the student's own vocational field, as well as

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in others. The system prevents the growth of such feelings of attachment as an American alumnus feels toward *his* university; alumni associations do not exist in Germany. This system promotes the feeling of freedom among the students, competition among faculties, and the sense of unity of the academic world.

IV.

Closely related to the tension created by the fact that universities are communities of scholars as well as teaching institutions, is that other apparent paradox that *universities* should be *places of scholarly education* as well as *of training for practical vocations.* In the beginning, American law schools were clearly schools of vocational training. The leading ones are now striving for a combination of this task with that of giving their students a broader education, especially of giving them an understanding of the functions, the methods, and the structure of the law, and an insight into the social and moral significance of the lawyers' activities.

Continental legal educators have struggled with this problem for centuries. They finally worked out a *partition* of the law curriculum into *two divisions,* a theoretical and a practical one. The theoretical bases are to be provided by the law faculties of the *universities,* the practical training is to be developed under a system of *apprenticeship* following graduation from the law school.

The three or four years of this "preparatory service" are spent by the *Referendar,* as the law school graduate is called, in various courts, where he has to act as assistant to a judge, in a public prosecutor's office, in various offices of state and municipal administration, and finally in an attorney's office. In these various stages, he becomes acquainted with the practical aspects of the law, the routine work, and the tricks of the trade.[26] The long time spent particularly in state agencies not only gives him an insight into the working of the complicated machinery of modern government, but also makes him live in the peculiar atmosphere of the German judiciary and civil service, with its deep-rooted traditions of responsibility, honesty and servility. Such a training has obvious influences on the ethics and outlook of the bar.

The long years of "preparatory service" conclude with a comprehensive examination, designed to test the candidate's knowledge of positive law and his ability to cope with practical problems.[27] Having

[26] See *infra,* Annex, III.
[27] See *infra,* Annex, III, § 39.

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passed this extremely difficult examination, he is entitled to call himself *assessor* and he is qualified to enter the public service, or the judicial career, or the bar.

Formal school training and practical apprenticeship are the two forms of preparation for the law to be found in history. American legal education has developed from the latter to the former. In German legal education, both forms are combined. This combination relieves the German law faculties from the responsibility of turning out men for immediately practicing their art upon the public. To fulfill such a task adequately was felt to be impossible, especially before the unification of German law when there were four different major systems of law in force in different parts of the country, these systems themselves being modified by several hundreds of different territorial and local customs.[28] What positive law could the universities have possibly taught under such a state of affairs? They had no choice other than to teach a "common law", which was nowhere in force as such, but still was the common basis of all the different laws of the country. Because there was no common law in force anywhere, basic problems, historical developments, methods of legal thought, concepts and a terminology common to all the local laws could be emphasized. Roman law, the accumulated legal wisdom and experience of the centuries and the common source of all the local laws, was thus used as a training ground for the understanding of legal problems, for sharpening the legal acumen, and for developing legal terms.

The inevitable result was that, down to the end of the nineteenth century, university law teaching had a preponderantly theoretical character. The main teaching method was the systematic lecture course, where a large field of the law would be treated as a coherent, logically structured whole with elaborate, clearcut concepts. For a small number of selected students, the lecture would be supplemented by seminars, where a professor would let them partake in his own research work and direct them toward doing scholarly research of their own.

Taught by a great personality, a *lecture* course can be an inspiring experience. A field of law is presented to the student in a systematic survey, where he is introduced to the problems and conflicts of life and the legal rules by which they are adjusted. He is made familiar with the legal concepts and institutions, their interplay, and

[28] See Děák and Rheinstein, *The Development of French and German Law* (1936) 24 Geo. L. J. 551, 568.

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their connections with each other. At least in the good lecture, a field of law is presented to the students not as a dry collection of unconnected rules, but as a living whole, designed for making possible human life in a complicated society. The lecture is based on the authoritative provisions of the codes and statutes. From the very beginning, however, the student is shown that the text has little meaning in itself, that it is brought to life by scientific exegesis and by the work of the courts. The instructor will explain the rules in their historic origins and their present functions; he will criticize them freely and illustrate them constantly through problem cases. Rarely, it is true, do the students come into the classroom as well prepared as their American colleagues. There are, however, no assignments to be worked and no cases to be digested. Only occasionally will the instructor recommend readings. As a consequence, the students can attend more classes, and it is easier to present to them within three to four years a comprehensive survey of the law in all its branches.

Not all lectures live up to such a standard. There are lectures which are dull and dry. It is rumored that there are even some professors who worked out their courses years ago and read them, literally, year after year, to their students, who eagerly write down in shorthand what they could just as well, or probably better, find in a book. Such professors, however, are becoming rare specimens of a vanishing species.

More frequently the theoretical teaching of the law faculties is in danger of becoming overdogmatic, of losing touch with the facts of life. Especially at the turn of the nineteenth century, law professors were blamed for revelling more in subtle distinctions than in basic principles, for paying more attention to historical details of antiquarian interest than to the living flow of legal developments as part of social life, for enjoying concepts for their own sake instead of using them as tools in the orderly direction of society. It was about the same time that German law was unified and codified whereby it was made impossible for the law faculties to center their efforts upon a "common law" which had lost its actual significance. The positive law of the new codes became the object of academic teaching and also of the learned efforts of the law professors. Similar developments had taken place a century before in France, when French law had been unified and codified by Napoleon, at which time a prominent French law teacher said: "I do not teach Civil Law, I teach the Civil Code".

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The tendency to turn from basic principles received increased impetus from the *positivistic* spirit of the early twentieth century, which was contented, aphilosophical, and interested in factual research—without asking to what use all the facts and data might be put. Besides, courts became so overburdened with business that the judges no longer regarded their *Referendars* as pupils or apprentices but as assistants; they expected the universities to turn out young men who were already able to do actual court work.

The effect of these various influences was that the law faculties saw their task to be less in providing their students with a solid general foundation upon which the "preparatory service" was to build the training in practical law, and more in furnishing this training themselves. The curriculum was consequently enlarged so as to provide instruction in all possible fields of future practice. Whenever a new branch of law was developed in the increasing scope of activity of the modern state, a new course was added to the curriculum until the emphasis finally shifted from the ancient basic fields of history and private law to a conglomerate of divers subjects of latest legislative development.

The increased burden of teaching finally led even to the idea of separating legal research from teaching. Shortly before the War, the Kaiser Wilhelm Society for the Promotion of Science established a number of institutes for research in the natural sciences. They should work apart from the universities, their members should devote all their time and energy to research, unhampered by any tasks of teaching. In 1926 the Kaiser Wilhelm Society established two similar institutes for legal research especially in the field of comparative law.[29] These institutes have already been able to exert a considerable influence on German legal science and on the practice of the courts[30] The intended separation from all academic connections was not carried out, however. The directors as well as several members of the research staff were members of the law faculty of the University of Berlin.

The post-war period brought an intensification of the positivistic tendencies as well as a reaction. The great upheavals of the war, the defeat, the revolution of 1918, and the depression led to new activities of the government and an enormous increase of legislation; but

[29] Institute of Foreign Private Law and Conflict of Laws, and Institute of Foreign Public Law and Law of Nations, both in Berlin.

[30] *Cf.* Rheinstein, *Comparative Law and Conflict of Laws in Germany* (1935) 2 U. of Chi. L. Rev. 232, 244. See also the emphasis on Comparative Law in the Study Plan of 1935 (*infra*, Annex, II).

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they also created the necessity of rethinking the basic problems of the law, the state, and society. Souls were stirred up; there was a revival of philosophy, political science, and passionate discussions of basic problems of methodology.[31] There was a new life in all fields of learning, a deep unrest. It made itself felt in the law as well as in legal education. Innumerable projects of reform were published and discussed, the best of which were aiming at a return to basic principles and methods, to the old idea that the university should lay the foundations, while training for actual practice should be left to the "preparatory service". Minor reforms were carried into effect in the various states, especially in Prussia. A more important step was made in 1935 under the National-Socialist regime. Courses were condensed and reorganized with emphasis upon the functional aspects of the law and upon its political bases, stressing, of course, the political tenets of the racially pure and totalitarian state.[32]

The results, however, of the positivistic wave were not altogether undesirable. The intensified treatment of the positive law actually in force resulted in a greater nearness to life in academic teaching. Lectures became less theoretical and abstract; the professors became accustomed to pay more attention to the decisions of the courts whose role had become so important when a central supreme court had been established. In post-war years especially, younger teachers gave room in their lectures to discussions and argumentation. They became more accessible to their students, more human and less dignified than the proverbial German professor of the old school.

There is one achievement in particular of the positivistic wave, which resulted in such a great improvement in legal education that no one has or is thinking of abandoning it, the *problem-case method.* It was developed in Vienna by the great Rudolph von Jhering, almost contemporaneously with Langdell's revolutionary invention of the case method. It has since become an integral part of legal education in German-speaking countries, and is now also making its place in France. It does not replace the systematic lecture but rather supplements it. Whenever a field of law has been systematically surveyed in a lecture course, it is regularly worked over again in a different method in the following semester.[33] The students have to apply what

[31] *Cf.* Rheinstein, *Comparative Law and Conflict of Laws in Germany* (1935) 2 U. of Chi. L. Rev. 232, 238.

[32] The reader should compare the titles of the new courses with those of the old ones, as indicated in the "Study Plan" (*infra*, Annex, II).

[33] Under the new Study Plan, the problem course is taught in the same semester as the lecture course.

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they have learned before theoretically. They have to solve problem cases in classroom discussion as well as in term papers, which are to be worked out in the library, usually within two weeks. In working on these problems, the students have to consult all the materials available, *i.e.*, reports, textbooks, search books, and law review articles. They are expected to discuss conflicting opinions and to write an exhaustive statement in clear language and good style. Usually, their elaborations will be about twenty to thirty pages long, but sometimes, when the problem is involved or particularly interesting, they may be considerably longer. The papers are handed in to the instructor, graded by him in such a way as to indicate to each student the mistakes he made, and finally discussed in class. Usually, the professor will first develop the solution he believes to be the correct one, and thereupon, a discussion will take place, the students often fervently defending their own opinions. In a class of 150 or more students—in Berlin, law classes in the last pre-National-Socialist years were sometimes attended by as many as 500[34]—grading four or five such term papers a semester is no easy task for a professor. Scholarly work is easily impaired by such a burden. When in the post-war years the number of law students increased by leaps and bounds, the ministries of education provided each professor with one or more assistants to grade the papers for him and upon his responsibility. These assistants, young graduates of exceptional ability, soon formed a new class within the organization of the German law faculties, which was similar to the instructors in American medical schools and became a reservoir for future *Privatdozenten* and professors.

During each semester a student usually takes two or three problem courses each having two classroom hours a week, in addition to sixteen or twenty hours of lecture courses. Besides working over his classroom notes of the lecture courses, he has to write six to nine term papers a semester, no small amount of work. Yet, the problem-case courses are popular with the students; they are even the best liked part of the curriculum. The students are eager to do work which bears the same features as that which they will be called upon

[34] In 1929, the largest law faculty (Berlin) was visited by as many as 3542 students, the smallest German law faculty (Erlangen) had 370. There was one professor for every 104.2 students in Berlin, and one professor for every 52.9 students in Erlangen; the average was one professor for every 69.27 students. The National-Socialist regime has restricted the access to the universities and reduced the number of law students from 16,175 in winter 1933-34 to 7,851 in winter 1935-36. In the summer 1929, the total number of law students was 22,990.

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to do in their future careers. They are zealous to apply so soon the theoretical information fed them in the lecture courses. The grades, though they have no influence on their graduation, give them a constant means of knowing their standing. The feeling that they really understand those topics over which they had to ponder is of still greater significance. The material covered by the articles and cases is retained better by students who read them for a purpose than by those who read them mechanically, as it happens so frequently in the American case method. It is the strength of the problem-case method that it combines study with creative work. The combination in each field of a lecture course with a problem-case course gives to the student the much needed systematic survey together with casuistic application. It teaches him judicial thought and method together with insight into the functions of the law as a whole and the interplay of all its parts and branches.

It is the writer's belief that the problem-case method is one of the most valuable tools ever developed in legal education, and that it could and should find a place in American law schools. Of course, it cannot replace the case method, which still is the most adequate tool for teaching a case law. But the case method could well be supplemented by problem cases and lectures. The difficulty of providing the reading room with sufficient copies of textbooks, statute books, law reviews, and especially reports, a task considerably less expensive in Germany than here, is more apparent than real. The writer has experimented with problem-case papers in the University of Chicago Law School whose library facilities have proved themselves to be quite adequate for a class of seventy-five students. The problem cases were not relegated, as in Germany, to a separate course, but were interspersed into courses taught in all other respects by the case method.[35] They were even used as a timesaving device when a case was assigned from a field not previously covered by classroom discussion. Examinations proved that the students were well acquainted with such topics. The reaction of the students was at first that of bewildered astonishment, followed by grumbling over the great burden of work.[36] Soon, however, the students admitted that they received much training and satisfaction from the papers. In subsequent quarters, the writer was even told by students that they were anxious to have the opportunity to write problem-case papers.

[35] The courses were those on Wills and on Family Relations.

[36] Three papers are being given during a quarter, each student being required to write at least two papers.

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There was also a marked improvement in quality of legal argumentation and in thoroughness, as well as in style. This improvement could be observed not only within the same course, but also from quarter to quarter. New students learned from term paper veterans what kind of papers they were expected to write, that they had to be careful not only to exhaust all the materials available and to refer continuously to all their references in the approved way of legal quotation, but also to arrange their ideas clearly and to express them in good English. Again and again it was found how little the students were accustomed to expressing themselves in good writing, and how hard they had to struggle with the language, with style, and even with grammar and spelling. The papers are an excellent way of impressing them with the simple truth that it is impossible to have clear thoughts when one is writing in a sloppy style. Even if students were to obtain no more from the term papers than a much needed lesson in writing good legal English, it would be no small gain. I do believe, however, that they also obtain from the papers new insights into the functions of the law, a thorough training in judicial thought, and, last, but not least, the joy of creative work.

It appeared advisable to express the problems as concretely and near to actual judicial and office practice as possible. Persons were not introduced as *A* and *B*, but as Patrick O'Connor, or Evelyn Young. They should appear as living beings who bring their needs and difficulties to a trusted lawyer, asking for help and advice, or who appear as litigating parties whose conflicting interests a human judge is called upon to adjust in the best interest of society and in accordance with the law of the land. Human interests should be aroused. When a lawyer's work is required in the form of an opinion, or a brief, or an office memorandum, the students are exhorted to stress all their ingenuity to find the legal approach which might be most helpful to their client, especially in a case which might look desperate at first sight. They should also learn, however, that it is neither good law nor good advocacy to resort to devious devices. The case should be arranged so as to impress the student with the necessity of considerations of forensic tactics, *e.g.*, whether it is advisable to follow one line of argument or another, whether or not eventual counter arguments of the other party should be anticipated. Such realism will not only be of practical value in the students' preparation for their future work, but it will stimulate their creative imagination and show them that law is dramatic life. In order to preserve the concreteness of the case, it is also advisable that it should

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be answered not under the imaginary rules of an abstract common law, but with respect to the rules applied in a concrete court, a court of a given state, or a federal court sitting in a given state. The latter may especially be used to advantage where questions of "federal common law" (*Swift v. Tyson*) are involved. Or, the case could be so arranged that the students could be asked to consider whether it is to the client's interest to bring suit in the state court or in the federal court, or in the court of one of several states. The easiest way for the instructor is to lay the scene in a court of the seat of the law school. Students often prefer to be permitted to consider the case under the law of the jurisdiction where they intend to practice. The instructor may learn much from reading such papers, though it may sometimes be impossible for him to grade them.

To formulate good cases is no easy task. In Germany, collections of problem cases form an important category of law books, which occupy there the place of the American case book. Problem cases are already contained in some American case books. These are not very well suited, however, for term paper assignments because they almost always indicate the actual case from which they are taken, and thus deprive the students of the pedagogical benefit of the search for the first lead. It must be admitted, though, that where no such lead is given, not all students will go through the search for the "leading case". Some lazy ones will depend on the fruits of the efforts of their more industrious colleagues. Collaboration of several students, incidentally, should not be discouraged. Term papers should not be examination papers. When the students realize that they write them for the benefit of their own training and experience, they will not feel tempted to copy a fellow student's paper. The grades of the term papers should serve the purpose of telling the students their mistakes and their standing, and only incidentally should they facilitate the task of the instructor in giving the final grades for the course.

I have dwelt upon the problem-case method at some length because I believe that wider use thereof could and should be made in American law schools. It is probable, as the modern case books indicate, that some use is already being made here and there. It has not yet been developed, however, into a fully recognized teaching method, and little exchange of experiences has taken place among American law teachers.

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V.

To find the compromises, proper to time and space, between the poles of scholarship and teaching, of academic freedom and governmental authority, of teaching basic principles and furnishing vocational training, is the task which faces German as well as American university law schools. It seems that American law schools will shortly have to cope with a fourth problem which is an old one to German law faculties. The almost exclusive aim of American law schools has been and still is to train *good lawyers,* while the task of a German law faculty was and is to prepare young men not only for the bar and the bench, but also, perhaps even primarily, *for public service* in a broader sense. When the German princes founded their universities, they did so for the very purpose of providing themselves with trained servants in the fields of public administration, public finance, diplomacy, and administration of justice.

The schools which trained the public administrators and judges, also trained the advocates who had to practice before them. This double purpose still determines the scope of continental "legal" education. The legal profession is still regarded as consisting of three branches: the civil service, the bench, and the bar. Each of these represents a separate career, but the common avenue to all of them is the study of the *law.*[37] It is the *training ground* for public careers in an even broader sense, for the leading positions in *business and finance,* in *diplomacy,* and in *politics.* Particularly in France, the law degree is still the mark of the educated man aspiring to a political career or to a leading position anywhere in public life. In Germany, special curricula were designed in recent times leading to such new degrees as Doctor of Economics[38] and Doctor of Business Science.[39] Yet, the Doctor Juris has not completely lost its old glamor and law

[37] In the South German states training for attorneys, judges, and administrative officials was identical not only at the university but also at the subsequent stage of the preparatory service; the final examination was the same for all and covered the entire field of law and public administration. In Prussia, preparatory service and final examination were different for the "legal profession" (judges, public prosecutors, attorneys) on the one hand, and government officials on the other. This system has now been extended over the whole Reich. See Annex, VI.

Judges are not elected or appointed in Germany from the number of attorneys, as in the United States. The bench is a separate career, which a candidate enters immediately after the Great State Examination. See Ploscowe, *The Career of Judges and Prosecutors in Continental Countries* (1935) 44 Yale L. J. 268. This examination tests the candidate's qualifications for the bench. He who has been found to be able to be a judge is also qualified to join the bar. See Annex, V.

[38] Dr. rer. pol. (Doctor rerum politicarum) or Dr. oec. publ. (Doctor oeconomiae publicae).

[39] Dr. rer. com. (Doctor rerum commercialium).

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schools still have to provide the common educational basis for judges, state and municipal administrators, consuls, diplomats, lawyers, notaries, politicians, bankers, businessmen, labor leaders, etc. Their curriculum has to be *broader* than that of an American law school with its single track aim. The topics of a "legal" character in the strict American sense appear only as parts of a larger, more comprehensive field—society, its machinery and its regulation. Since this whole field is taught by a faculty which calls itself "faculty of law", the emphasis is on the aspect of regulation, in other words, on law.

Political science is merged with the science of law and has thus assumed a peculiarly legalistic slant. In post-war years only, a "political" science emerged, or perhaps re-emerged, within the law faculties, which lent greater emphasis to the sociological aspects of state and government. "International Relations" is divided into International Law, regarded as an indispensable part of the law curriculum, and Political History, cultivated and taught by the historians. Economics is a field of learning of its own. Sociology had to fight for recognition and academic standing until the post-war years. Social science, so industriously developed in the United States where it is regarded as such a basic means of education in democracy that it is taught in high schools and even grammar schools, practically does not exist in Germany. One is induced to speculate on the connections of this phenomenon with the political temper of the German people, whether it is one of the consequences of the lack of a developed democratic spirit, or maybe even among its causes. Or is it perhaps solely due to a conviction that practical social problems, being essentially problems of evaluation, cannot be solved with statistics and the methods of the natural sciences?

For the education of future lawyers and judges, at any rate, the system was an undoubted advantage. It makes the law constantly appear as a means of social control and regulation instead of a body of rules bearing its own ends within itself. It also tends toward sharpening the eyes of lawyers and judges for the political implications of their activities, toward enabling them to better recognize the public interest with which all litigation, even between private individuals, is affected. The future public administrators, on the other hand, recognize that their powers are not only limited by, but are also based upon, rules of law by which they are bound—no small guaranty of individual rights against administrative arbitrariness. Lawyers and judges will finally not look upon administrative officials as enemies against whom they have to protect the public, but as brethren

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of the same profession, as co-workers in the common task of orderly administering the life of society.

Not quite so complete as the amalgamation of law and political science is that between law and economics. Since economics is one of the topics of the final examination, every law student will follow those economic courses which are recommended to him by the official plan of law studies. Even where the professors of economics are united in the same faculty with the professors of law, as is the case in some universities, the two fields are felt to be separate, and their intimate connection is not always obvious to the students.[40] Yet, the mere fact that economics is a required part of legal education provides every law student with a stock of information about the economic facts of social life and the problems it presents for solution to lawgivers and courts. The fact, that the economic courses are taken not before, but contemporaneously with, the law courses also tends to bring the two fields into closer contact.

Before long, law schools in this country will have to make up their minds whether they will leave the training of public servants to new vocational "schools of public administration", or whether they will open new careers to their own graduates and thus widen the scope of education of future attorneys and judges. Already now, the task of becoming the leading *honoratiores* in the development of the law of the New World has devolved upon the American law professors. A look at their European sister institutions may reveal to the American law teachers the picture their own institutions are likely to present when this new task is fully recognized.

[40] On the analagous situation in France, see Robert Valeur, L'enseignement du droit en France et aux Etats-Unis (1928) 77.

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ANNEX

The principal passages of the German statutes on legal education are translated here in the form in which they were re-enacted by the National-Socialist Government. The principal purpose of the re-enactment was the unification of such details as were formerly different in the different states. Substantive changes were made in the following two respects:

(1) To carry out older suggestions the number of courses was reduced, and the subject-matter of the university curriculum was condensed into a relatively small number of comprehensive courses, where the problems of life and the rules of law are presented in a functional approach.

(2) Great care was taken to organize legal education in such a way as to thoroughly imbue the candidate for the bench, the civil service, and the bar with the racial spirit of National-Socialism, and as to eliminate candidates who are not fully imbued with this spirit.

The basic principles of German legal education, as they were developed throughout the centuries, have not been affected by the recent changes, and still form the essential substance of the following provisions.

I.

MAXIMS FOR THE STUDY OF LEGAL SCIENCE[41]

A. Basic Ideas

Teachers and students of the law:

German legal science is to become National-Socialist. National-Socialism is not a confession to be given lip service, but a philosophic system. You shall never forget that it is not slogans that count but substance! He who is a National-Socialist at heart does not have to say much about it; he acts accordingly.

German legal science is still living within the framework of ideas of Roman common law. In a good many details, it is true, our own racial law, the old one as well as the new, has found expression; the intellectual bases, however, are still determined by the system of the Pandects. This system is the object of our struggle.

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[41] Issued by the Reichs and Prussian Minister of Education, January 18, 1935.

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Do not allow yourselves to be overlooked in the renovation of our law! There is no better arena in the struggle for intellectual values than the university. Legislation must not be the beginning but the crowning . . . of our strife. Do not be satisfied with interpreting or memorizing existing statutes! Be fighters to overcome them with a truly German law!

B. Organization of Studies

(1) The study plan is organized upon a curriculum of six semesters at least. Since it will hardly be possible, however, to master the field without adding another semester, it is urgently recommended to devote seven or eight semesters to the study of law.

(2) In his two initial semesters, the student shall become acquainted with the racial bases of science. Courses on Race and Sib, Folklore and Pre-history, on the political history of the German people, especially during the last hundred years, have their place at the beginning of the study of every ideologic science. At the same time, the student of law is being introduced into the special historical and political tasks of his field.

(3) The third, fourth, and fifth semesters are reserved for detailed professional studies. The sixth semester, already being overshadowed by the impending final examination, is kept free, as far as possible, from ordinary lecture courses. Problem-case sources for advanced students, discussion classes and seminars are to be emphasized, just as in any eventual additional semesters.

(4) Prescribed courses exist no longer. There is no compulsion to register for any course. The principal courses are indicated by an asterisk, or, in case of special importance, by two asterisks. The students are absolutely free, however, even in their selection or rejection of those courses.

(5) The principal courses are listed in a fixed plan of studies, wherein each is ascribed to a certain semester. No course can be taken earlier; each course may be taken later or repeatedly.

(6) Every principal course is given once a year only. A student who starts his studies in the ordinary course, viz. with a winter semester, and organizes his work in accordance with the Study plan, will find the courses provided by the Plan at the proper time in every German university. The students' freedom of migration is thus guaranteed.

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C. Maxims for the Faculties

(1) The faculties have to take care that all principal courses are taught at the proper time. The principal courses provided for the first, third, and fifth semesters are to be taught in the winter only, those provided for the second, fourth, and sixth semesters are to be taught in the summer only.

(2) A professor, in announcing a course, has to indicate the semester in which, in his opinion, it should be taken. He may leave open a choice between two semesters. No elective courses are to be announced for the first two semesters.

(3) It is not only permissible but highly desirable that more than one course on the same principal subject be taught in the same semester by different professors. In such a case, the junior professor is not bound by the hour and length of the course chosen by the senior professor, but by the Study Plan only.

(4) A principal course may be divided into several courses; several courses to be taught in the same semester may be combined to form a single course.

(5) Problem-case courses provided in the Study Plan are to be given in the same semester as the principal course to which they belong and as far as possible, should be taught by the same professor.

(6) [Instructions for the technical arrangement of the faculty programs].

D. Maxims for the Students

(1) Go to the university, not to cram courses! You shall not accumulate information for the examination, but you shall become guardians of the German law!

(2) The renovation of the universities cannot be achieved within a day or two. At the first, the law faculties of Kiel, Breslau, and Koenigsberg have been chosen to become political shock-battalions. They should be preferred by you!

(3) Do not register for a course which you do not really intend to follow! Your attainments will be decisive in the examination, not the list of courses registered for.

(4) The asterisks in the program are no more than sign posts. A student following them exclusively is acting like a tourist following the guide book blindly. You may safely leave out even a principal course, if it does not attract you. Take a few more elective courses in which you are interested.

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(5) Be sure to form co-operative work communities! Voluntary work of your own choosing is the best stimulus; your comrades are your best teachers.

II.

SEMESTER PLAN[42]

A. First Semester

	Weekly hours of: Lecture	Problems
German Law: replaces the course on Introduction to Law; it shall not give, however, a mere condensed survey but elaborate the great lines and principles	2	
People and State: replaces the course on "General Theory of the State" insofar as it was concerned with politics; History and Comparative Law are better treated in the course on "Modern Constitutional History"	1-2	
Pre-History: not yet taught everywhere but most highly desirable	1-2	
Teutonic Legal History: may also be announced as "German Legal History", depending upon what aspects are emphasized; to elaborate the course as one on Teutonic Legal History must be the goal; the development of the several legal institutions [sc. of Teutonic origin] ought to be treated in this course; it concludes with the fourteenth century	4-6	1
Sib Science:[43] There are not yet enough teachers for this field; its better cultivation is highly desirable	1	
Family: includes the law of natural persons, esp. capacity, the law of the family with the exception of the law of matrimonial property, and also the leading principles of the law of succession upon death	3	1-2
German Economic Life: replaces the course on "Introduction to the Economic and Social Understanding of the Present Age"; it shall familiarize the students with the important facts of economic life	2	

B. Second Semester

People and Race: The course shall, without discussing debated questions of anthropology, demonstrate to the students the implications of the race in all aspects of the life of the people	1-2	

[42] Compiled by C. A. Eckhardt (Das Studium der Rechtswissenschaft (1935) 12) on the basis of the Study Plan issued by the Reichs and Prussian Minister of Education on January 18, 1935.

[43] The word *Sippenforschung* in the German original sounds just as strange as the English phrase Sib Science.

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	Weekly hours of: Lecture	Problems
PEASANT: deals with the importance of peasantry for the preservation of the race and the people, with the structure of the "Reichs Food Estate" and with the law of "Inheritable Farms"; replaces the course on "Law of Agriculture"	1-2	
FOLKLORE: can be taught at present at a few universities only; greater emphasis desirable	1	
POLITICAL HISTORY: Appropriate courses in the Faculty of Philosophy, especially on the developments of the last hundred years, on history of political parties, on the National-Socialist movement, etc. shall be pointed out to students; it is also desirable to take a course on older German history	3-4	
MODERN CONSTITUTIONAL HISTORY: includes the development of so-called public law from the end of the Middle Ages to the present age; may also include the history of criminal law and procedure, and then be announced as "Modern Legal History"; comparative law is most highly desirable	3	
CONTRACTS AND TORTS: basic course on contractual and delictual liability; includes the contractual doctrines of the former course on "The General Part" [sc. of Private Law] and replaces the course on "General Doctrines of Obligations"; includes also quasi contracts	3-4	2
ECONOMIC THEORIES: replaces the course on "General" or "Theoretical Economics"; historical emphasis is desirable	2-3	

C. THIRD SEMESTER

CONSTITUTION: replaces the course on "Constitutional Law"	4	2
CRIME AND PUNISHMENT: replaces the courses on "Criminal Law, General Doctrines" and "Criminal Law, Special Part"; emphasis on the special part is desirable	4-6	2
SOIL: deals with land other than Inheritable Farms, including contractual rights, property rights and procedural aspects	2-3	1
MERCHANDISE AND MONEY	3-4	1
ECONOMIC POLICIES	3-4	1-2

D. FOURTH SEMESTER

PUBLIC ADMINISTRATION: replaces "Administrative Law"	4-5	1-2
CRIMINAL PROCEDURE	2-3	
FAMILY INHERITANCE: includes matrimonial property and succession upon death	2	
INTELLECTUAL CREATION: deals with copyrights, rights of inventors, and the relations between author and publisher	1-2	

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	Weekly hours of: Lecture	Problems
COMMERCE AND INDUSTRY: deals with the legal position of merchants and of industrial enterprises, furthermore with unfair competition, the register of merchants, and commercial courts	2	1
COMPANIES AND PARTNERSHIPS	2-3	1
BUSINESS SCIENCE: A choice may be left open between several different courses on business science	2-3	

E. FIFTH SEMESTER

LEGAL HISTORY OF ANTIQUITY: may also be announced as "Roman Legal History"; broadening of the course to the scope of "Legal History of Antiquity" is desirable. This course includes the principles of "Roman Private Law and Procedure"; it concludes with Justinian	4-5	1-2
LITIGATION: replaces "Civil Procedure"	3-4	2
NEGOTIABLE INSTRUMENTS	1-2	
WORKER: replaces the several courses on "Labor Law"; it goes without saying that special courses, *e.g.*, on "Social Insurance", may still be announced	2-3	
ENTERPRISE: The Organization of the Economic Estates is to be emphasized; the course may be combined with the course on "Worker" as a four hour course	1-2	
INTERNATIONAL LAW: additional elective courses highly desirable	2-3	
LAW OF PUBLIC FINANCE: replaces "Law of Taxation"	1-2	
SCIENCE OF PUBLIC FINANCE	2-3	

F. SIXTH SEMESTER

HISTORY OF MODERN PRIVATE LAW: replaces and combines the courses on "Germanic Private Law" and "Roman Private Law", as far as they dealt with legal developments since the end of the Middle Ages	3-4	
EXECUTION: Bankruptcy may be included or may be announced as a special elective course	1-2	
ECCLESIASTICAL LAW	2-4	
APPLICATION OF FOREIGN LAW: replaces "Private International Law" [Conflict of Laws] and is not to be limited to Private Law	1-2	
PHILOSOPHY OF LAW AND GOVERNMENT: may also be announced as "System of the Law" if it gives a systematic vision of the law in its totality instead of dealing with its philosophical bases	2-4	

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III.

ORDINANCE ON TRAINING FOR THE LEGAL PROFESSION[44]

A. End of the Training

The end of the training for the legal profession is the thoroughly trained servant of the law, who is of an impeccable character, who lives in and with his people, and who is willing and able to be to his people a firm and incorruptible helper and leader in the legal formation of its lives.

Legal education, to attain this end, must seize the entire personality, bring into harmony spirit and body, fortify the character, strengthen the will, imbue the young man forever with the consciousness of the national community, convey to him a comprehensive erudition, and build upon this basis a solid professional capability.

B. First Part. First Juridical State Examination (Requirements, Procedure, Decisions)

§1. *Course of Training in General*

(1) The training, which is under the direction of the Reichsminister of Justice, begins with the practical preparatory service.

(2) Appointment as "court referendar" is required as preliminary to entering this service.

(3) Nobody can be appointed court referendar without having passed the first Juridical State Examination.

§2. *Requirements for Admission—Education in Community*

(1) On applying for admission to the first juridical state examination, the applicant must prove that he has lived in close association with racial comrades of all classes and professions, has acquainted himself with and learned to appreciate physical labor, has practiced discipline and subordination, and prepared himself physically as it befits a young German man. For this purpose he must have worked satisfactorily in the labor service and prove it by his labor passport. The length of the labor service is determined by the competent authority.

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[44] Issued by the Reichs and Prussian Minister of Justice, July 22, 1934 (Justizansbildungsordnung RGBl. 1934 I 727).

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(2) The requirement of the labor service cannot be dispensed with unless the applicant establishes by an official medical certificate that he has been unable to serve for reasons of health.

(3) Since only he who has learned to obey is able to command, and since character is formed in no way other than in association with others, the applicant shall show furthermore how he practiced his physical training and his association with other groups of the people after the completion of his labor service.

§3. *University Study*

(1) The applicant has to prove an orderly university study of law for at least six and at most ten semesters. This requires documentary proof that the applicant has registered for lecture courses on all subjects which are covered by the first juridical state examination and has participated diligently in the problem-case courses on these subjects.

(2) Proof of active participation in at least one co-operative study group is recommended.

(3) It is finally desirable that the applicant, during his study, has been an active member of at least one seminar.

§4.

(1) The central task of the study shall be a thorough and conscientious professional training.

(2) It is required, however, that the study be not thus confined. The applicant shall acquire during his study a survey of the entire intellectual life of the nation, as it is expected of an educated German man. This includes a knowledge of German history and of the history of the peoples who have favorably influenced the development of the German people, as particularly the Greeks and the Romans. It includes, furthermore, a serious occupation with National-Socialism and its ideological fundaments, with the idea of the ties between blood and soil, and between race and culture, with German community life, and with the great men of the German people.

(3) Based on this general racial knowledge, the student shall develop by serious and profound work, his professional knowledge, understanding, and ability; being continuously aware that legal science, legal practice, and the creation of new law are justified only by the functions which they have to perform in the life of the people.

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The student shall perceive the meaning of these functions and thereby become conscious of the responsibility of his future profession.

(4) Solid and appropriate knowledge is the necessary basis of the training; its aim, however, is to have a vision of the law as a whole, a capability to practically view the phenomena of life, a trained sense of justice and equity and on such a basis, the ability of applying the law rightly.

§5. *Subject-matter of Legal Studies and Examinations*

(1) The professional study of the applicant must include:

1. the law of the German state and its development, including the principles of public administration;
2. the law of the German family, including the principles of the law of succession;
3. the law of intellectual and artistic creation;
4. the law of dominion over things;
5. the law of contractual relations;
6. the law of the German peasant;
7. the law of labor and the principles of industrial law;
8. the German criminal law;
9. the principles of procedural law.

(2) These fields are covered by the first juridical examination.

(3) On application the applicant may be examined in other fields of law.

§6. *Occupation at Courts*

(1) It is expected that the student work diligently at a county court [*Amtsgericht*] for six to eight weeks during his university vacations immediately following the third semester, but before taking courses on procedure.

(2) The work is to be done mainly in the clerk's office; it shall acquaint the student with the routine of the office, the land records, the files and registers, and give him an opportunity to attend trials as an auditor.

C. Second Part. The Preparatory Service

§25. *Entrance into the Preparatory Service*

(1) A law candidate who has passed the first juridical state examination can be admitted on application to the preparatory service.

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(2) The application is decided upon after inspection of the examination records.

(3) The application is to be declined if the applicant is in advance deemed unfit for the preparatory service or not worthy of admission. The rejection is marked on the examination records.

(4) The preparatory service begins on the day the candidate takes the official oath.

§26. *End of the Preparatory Service*

The preparatory service shall enable the law candidate, by virtue of a thorough knowledge of the law, to decide cases correctly and in a popular manner, to combat enemies of the people, to advise the law seeking populace, and to promote the labor peace through all such activities.

§27. *General Principles*

(1) To attain this end the referendar shall be ordered to do professional work, the independent character of which shall be increased in the course of his training. He shall be instructed and trained for the tasks of: judge, public prosecutor, attorney, and he shall be introduced to the routine of public administration.

(2) In addition, the preparatory service shall further the development of his general education and the firmness of his character.

(3) He shall finally be afforded an opportunity to review his entire legal learning before the completion of his preparatory service.

(4) The referendar is expected to discipline himself and to contribute the most important part of his education himself, and to improve his professional knowledge through conscientious home study.

§28.

(1) The extent and the kind of work to be assigned to the referendar must not be determined by a desire to profit from his work, but by the end of the training.

(2) The nearer the referendar approaches the completion of his training, the better will the end of his training be served by his taking an active part in the work of the authority to which he is attached. The contribution he makes thereto will also be a measure of the success of his training.

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§29. *Length and Division of the Preparatory Service*

(1) The preparatory service lasts at least three years.

(2) The referendar receives his training, for at least eight months at a County Court [*Amtsgericht*] with a staff of not more than four judges; for at least eight months at a District Court [*Landgericht*]; of this time four months each are devoted to the training in private law and criminal law respectively; at least three months of the training in criminal law are to be spent in the office of the public prosecutor. . . . (During the training in criminal law the referendar is also to be made acquainted with penal execution); for at least five months at an attorney's office; for at least four months at a District Court of Appeal [*Oberlandesgericht*].

(3) In addition, there are at least four months to be spent in a County Court [*Amtsgericht*] with a staff of more than four judges, including work in a Labor Court, and at least seven months of work in the state or municipal administration.

§34. *Group Training*

(1) The practical individual training of the referendars is to be supplemented by group training. . . .

(2) The training groups to be formed for this purpose shall not only intensify the vocational knowledge of the referendars and broaden their professional outlook, but, quite particularly, educate the referendars in the spirit of the National-Socialist conception of the state.

(3) It is recommendable to organize the referendars in co-operative groups of about twenty, at most twenty-five, under the leadership of a specially appropriate judge or state attorney. Under the guidance of this leader, who shall be equally teacher, adviser and symbol, the referendars shall educate each other in the spirit of voluntary coordination and active comradeship.

§35.

During the final training period, the referendars are to be given an opportunity to review in appropriate courses all subject matters of the examination.

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D. THIRD PART. THE GREAT STATE EXAMINATION

§39. *End of the Examination*

The object of the great state examination is to determine whether the referendar is capable of performing the functions of a judge, considering his whole personality with regard to his professional and general learning, his practical ability to manage affairs, as well as his character and other personal qualities.

IV.

DECREE NUMBER ONE FOR THE EXECUTION OF THE ORDINANCE ON TRAINING FOR THE LEGAL PROFESSION[45]

§5.

Candidates who apply for admission to the first juridical state examination after March 31, 1935, have to prove that they have participated in at least five problem-case courses at a university, among which there must be a problem-case course on German constitutional and administrative law.

§42.

(1) The applicant is expected to be able to write and read the German shorthand system. . . .

V.

ATTORNEY'S ACT[46]

§1.

To be admitted as an attorney, one must have acquired, by passing the Great State Examination, the qualification for being appointed a judge.

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[45] September 13, 1934 (RGBl. 1934 I 831).

[46] Rechtsanwaltsordnung, July 1, 1878 (RGBl. 1878 177), republished as Reichsrechtsanwaltsordnung of February 25, 1936 (RGBl. 1936 I 107).

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VI.

DECREE REGARDING THE TRAINING FOR THE HIGHER SERVICE IN THE GENERAL AND INTERIOR ADMINISTRATION[47]

§1.

(1) The training for office in the higher service in the general and interior administration consists of a university study and a preparatory service. The university study ends with the first, the preparatory service with the second examination.

(2) As for the university study the provisions of the Ordinance on Training for the Legal Profession, July 22, 1934 (RGB1. I. p. 727), are applicable.

(3) The first examination is the first juridical state examination in accordance with the provisions of the Ordinance on Training for the Legal Profession.

§2.

Between the first and the second examination there must be a preparatory service of at least three years.

§3.

The preparatory service begins with an occupation for seven months as a court referendar in a County Court.

§4.

(1) The application for transfer to the preparatory service of the administration can be made after five months of preparatory service as court referendar to the Reichsminister of the Interior or the administrative agency appointed by him.

(2) After completion of the preparatory service as provided for in Section three, the court referendar can be transferred to further preparatory service as a government referendar.

(3) The total number of government referendars to be admitted is determined by the Reichsminister of the Interior.

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[47] Issued by the Reichsminister of the Interior and the Reichsminister of Justice, June 29, 1937 (RGBl. 1937 I 666).

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§5.

(1) The preparatory service as government referendar extends over at least two years and five months. It begins on the day of entrance into the service.

(2) The occupation during the preparatory service is determined by the Reichsminister of the Interior.

(3) The administrative agency to be appointed by the Reichsminister of the Interior can charge government referendars with temporary attendance of offices in a municipal administration.

§7.

(1) The Great State Examination consists of a written and an oral part.

(2) It covers the principles of the National-Socialist state; the history of the German people; the law of nation and state, including racial theory; the constitutional and administrative law and its historical development; the science of public finance; the law of the German peasant; the law of German labor and industry, including economics; the law of German culture; and the principles of civil and criminal law.

§8.

(1) . . . .

(2) Assessors who have passed the Great State Examination in accordance with the provisions of the Ordinance on Training for the Legal Profession can be appointed government assessors according to the needs of the administration, if they have successfully served in the administration for at least one year.

The foregoing article is the first of a series of three studies relating to legal education in other countries, prepared under the auspices of the Association of American Law Schools (subcommittee on comparative legal education, Professor James J. Hayden of the Catholic University of America Law School, chairman). It will be followed in subsequent numbers of the Review by an article on English legal education by Carl Newton of the New York bar and one on French legal education by Professor Francis Déak of Columbia University Law School. As soon as the remaining articles are in type, the three, assembled in pamphlet, will be distributed by the Association to its member schools.

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